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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Comprehensive Care Corporation

Serial No. 75/111,981

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for Comprehensive Care Corporation.

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Office 105 (Thomas G. Howell, Managing Attorney).

Before Hohein, Walters and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Comprehensive Care Corporation (a Delaware
corporation) has filed an application to register on the
Principal Register the mark COMPREHENSIVE BEHAVIORAL CARE
for services ultimately identified as follows:

"case management for the health
benefits plans of others" in
International Class 35;

"organization and administration of
prepaid behavioral healthcare plans and

administration of employee healthcare plans, including workers' compensation" in International Class 36; and

"healthcare in the nature of a behavioral health maintenance organization" in International Class 42.¹

Registration has been refused for all three classes under Section 2(e)(1) of the Trademark Act on the basis that, when used in connection with applicant's services, the mark is merely descriptive of them. The Examining Attorney also found that applicant's showing with respect to its alternative claim of acquired distinctiveness under Section 2(f) is insufficient.

Applicant has appealed as to all three classes of services. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

The issues before the Board are (1) whether applicant's mark COMPREHENSIVE BEHAVIORAL CARE is merely descriptive when used in connection with each of the involved services; and (2) if the mark is merely descriptive, whether applicant has submitted sufficient

¹ Application Serial No. 75/111,981, filed May 31, 1996. The application was originally filed based on applicant's assertion of a bona fide intention to use the mark in commerce. Applicant subsequently filed an Amendment to Allege Use, which was accepted by the Office, asserting a claimed date of first use and first use in commerce of August 1, 1995 for each class.

evidence of acquired distinctiveness under Section 2(f) to overcome the refusal to register under Section 2(e)(1).

Turning first to the question of descriptiveness, the Examining Attorney submitted definitions demonstrating that (*italics in original*):²

- (1) "comprehensive" is defined as "adj. 1. broad in scope or content..." in Webster's II New Riverside University Dictionary (1994);
- (2) "behavioral" is the adjectival form of "behavior" defined as "n. 1. manner of behaving or acting. 2. *Psychol., Animal Behav.* a. observable activity in a human or animal. b. the aggregate of response to internal and external stimuli. c. a stereotyped, species-specific activity, as a courtship dance or startle reflex..." in the Random House Unabridged Dictionary (2nd ed. 1993); and
- (3) "care" is defined as "n. 4. protection, charge: *He is under the care of a doctor...*" in the Random House Unabridged Dictionary (2nd ed. 1993).

The Examining Attorney also submitted several excerpted stories retrieved from the Nexis database showing

² The latter two definitions were attached to the Examining Attorney's brief, and she requested that the Board take judicial notice thereof. The Examining Attorney's request is granted. See *The University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). See also, TBMP §712.01.

highly descriptive/generic use of either the phrase "comprehensive behavioral care," or "comprehensive behavioral healthcare," examples of which include the following (emphasis added):

- (1) Headline: Rewards of Mentoring Await -

...Sweetser Children's Services is the state's oldest non-profit children's welfare agency. It offers **comprehensive behavioral care** and a continuum of services for children, families and communities. ..., Portland Herald Press, January 16, 2000;

- (2) Capitol Hill Hearing Testimony of Jeanne Lally, April 29, 1997, Before the Senate Special Committee on Aging -

Fairview Hospital and Healthcare Services is a comprehensive integrated health care system comprised of a full array of health services including 30 primary care clinic sites, seven hospitals..., four long-term care facilities..., a comprehensive home care agency, 14 senior housing buildings, a network of retail pharmacies, a network of outpatient rehabilitation services, a **comprehensive behavioral care** network, and many educational and social services...;

- (3) Headline: 97% of Bosses and Employees Agree: Happy Workers Are Indeed the Most Productive -

...it's the company's responsibility to help employees through hard times. A total of 81% of employers say they would consider offering **comprehensive behavioral healthcare** benefits if they would help improve the bottom line. While extended behavioral healthcare services help employees overcome personal

issues and ..., Facilities Design & Management, July 1995; and

- (4) Headline: Charter Medical Acquires Westwood Pembroke Health System -

... market by acquiring the Westwood Pembroke Health System. With annual revenues of approximately \$41 million, Westwood Pembroke is a **comprehensive behavioral healthcare** system that includes two leading hospitals, Westwood Lodge Hospital and Pembroke Hospital; a professional group of psychiatrists and ..., Medical Industry Today, April 3, 1995.

The Examining Attorney also points out applicant's own descriptive uses of the words, such as the following examples from applicant's specimens:

"Building cost-effective behavioral health care products on a solid foundation of quality care";

"Selecting from a comprehensive array of available behavioral health care options..."; and

"Comprehensive Behavioral Care offers a large, widely dispersed network of credentialed behavioral health care providers in all behavioral specialties...."

In the brochure submitted as Exhibit A to the declaration of Courtney E. Watson, applicant's corporate secretary, the following statements are made:

"The mission of Comprehensive Behavioral Care is to maximize the productivity and well-being of members, employees and their families through the delivery and

care management of comprehensive behavioral health care services, programs and products";

"Access to a full range of behavioral health care services is facilitated"; and

"In behavioral health care, quality is the most important factor in determining a truly successful program."

The Examining Attorney essentially contends that this evidence establishes that the phrase COMPREHENSIVE BEHAVIORAL CARE has an immediately recognizable descriptive meaning, specifically, that it describes "a type of service in the healthcare field." (Examining Attorney's brief, p. 3.) The Examining Attorney finds the phrase is merely descriptive of all three of applicant's identified services.

Applicant, in urging reversal of the refusal, contends that the mark does not immediately describe any of applicant's services relating to case management for health benefits plans, organization and administration of employee health care plans, and/or a behavioral health maintenance organization; that "consumers must use considerable thought and multi-stage reasoning to begin to appreciate the type of services provided under Applicant's COMPREHENSIVE BEHAVIORAL CARE mark..." (brief, p. 7); that "even if the individual words 'comprehensive,' 'behavioral' and 'care'

are common words in the healthcare industry, it does not necessarily follow that the composite mark COMPREHENSIVE BEHAVIORAL CARE is merely descriptive..." (brief, p. 8);³ that applicant owns one registration for the mark COMPREHENSIVE CARE CORPORATION (Registration No. 1,227,026 for rehabilitative programs for problems related to alcoholism, mental health and drug abuse, related employee assistance programs, community counseling and referral programs, and consultation services to hospitals and health assistance programs⁴), and five registrations for the mark COMPCARE (either in typed form or stylized lettering) (Registration No. 1,025,435 for implementation of alcoholic rehabilitation programs and centers in general hospitals, Registration No. 1,202,661 for books and pamphlets relating to rehabilitative health care, and retail mail order services for audio and video recordings and movies, all relating to rehabilitative health care, Registration No. 1,211,963 for employee assistance programs, Registration No. 1,333,713 for rehabilitative health care services, and Registration No. 1,517,632 for retail mail order services for books, pamphlets and other printed matter relating to

³ It is noted that applicant offered to disclaim the term "care" if the Board determined that a disclaimer thereof was required because "CARE" is generic. (Brief, p. 5, footnote 1.)

⁴ This registration issued under Section 2(f) of the Trademark Act.

rehabilitative health care⁵), making it likely consumers will recognize applicant as the source of services provided under the COMPREHENSIVE BEHAVIORAL CARE mark; and that doubt on the issue of mere descriptiveness is resolved in favor of applicant.

The well-established test for determining whether a term or phrase is merely descriptive under Section 2(e)(1) of the Trademark Act is whether the term immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used. See *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Eden Foods Inc.*, 24 USPQ2d 1757 (TTAB 1992); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). The determination of mere descriptiveness must be made not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re*

⁵ Two of those registrations (Reg. Nos. 1,025,435 and 1,333,713) are geographically restricted concurrent use registrations.

Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); and In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991).

Furthermore, such question is not whether someone presented with only the term or phrase could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990); and In re American Greetings Corp., 226 USPQ 365 (TTAB 1985).

The Examining Attorney has established a prima facie case that the term "COMPREHENSIVE BEHAVIORAL CARE" is merely descriptive of applicant's identified services. The evidence shows that the relevant purchasers and users would understand the term COMPREHENSIVE BEHAVIORAL CARE to refer to significant features, functions and purposes of applicant's services, namely, that they involve administering and managing health care plans and HMOs for behavioral issues of all types, with various all-inclusive treatments. Applicant's own specimens and advertising brochures, as well as the stories retrieved from the Nexis database, indicate the descriptive nature of the words "COMPREHENSIVE BEHAVIORAL CARE" in the field of behavioral healthcare.

We agree with the Examining Attorney that applicant's mark COMPREHENSIVE BEHAVIORAL CARE, when used in connection with applicant's identified services, immediately describes, without conjecture or speculation, a significant feature, function and/or purpose of applicant's services. Nothing requires the exercise of imagination or mental processing or gathering of further information in order for purchasers and prospective customers of applicant's services to readily perceive the merely descriptive significance of the term COMPREHENSIVE BEHAVIORAL CARE as it pertains to applicant's provision of case management, administration of prepaid behavioral healthcare plans, and behavioral healthcare HMOs. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE merely descriptive for potpourri); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (FIRSTIER (stylized) merely descriptive for banking services); and *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays).

Applicant has argued that its incontestable registrations for the marks COMPREHENSIVE CARE CORPORATION and COMPCARE are prima facie evidence of the validity of applicant's marks. This is true to the extent that all

registrations on the Principal Register are entitled to the presumptions of Section 7(b) of the Trademark Act, and pertaining of course, to the marks as registered. To whatever extent applicant is relying on the incontestability under Section 15 of its prior registrations and the case of *In re American Sail Training Association*, 230 USPQ 879 (TTAB 1986) (in an application to register the mark RETURN OF THE TALL SHIPS, a requirement was made for a disclaimer of the words TALL SHIPS apart from the mark despite ownership of a prior incontestable registration for the mark TALL SHIPS for the identical services), we find the American Sail case, supra, is not applicable in the case now before the Board. This is so because applicant's prior registrations for COMPREHENSIVE CARE CORPORATION and COMPCARE involve different marks for different goods and services, and in fact, the registration for COMPREHENSIVE CARE CORPORATION issued under Section 2(f).

While the public may recognize applicant's previously registered marks COMPREHENSIVE CARE CORPORATION and COMPCARE as identifying applicant as the source of the goods and services covered in those registrations, there is no indication in this record as to how the public will understand the phrase COMPREHENSIVE BEHAVIORAL CARE based

solely on their knowledge of applicant's other marks. Moreover, each application for registration of a mark must be separately evaluated. See *In re Loew's Theaters, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985); *In re Stanbel Inc.*, 16 USPQ2d 1469 (TTAB 1990); and *In re Bank America Corp.*, 231 USPQ 873 (TTAB 1986). See also, *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1141-1142 (Fed. Cir. 1987); and *In re Sunmarks Inc.*, 32 USPQ2d 1470, 1472-1473 (TTAB 1994).

Accordingly, we hold that applicant's mark is merely descriptive when used in connection with each of applicant's services.

Turning now to the alternative issue of acquired distinctiveness, applicant has the burden of establishing that its mark has become distinctive. See *Yamaha International Corp. v. Hoshino Gakki Co. Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001, 1006 (Fed. Cir. 1988).

The question of acquired distinctiveness is one of fact which must be determined on the evidence of record. As the Board stated in the case of *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996, 1999 (TTAB 1986):

[e]valuation of the evidence requires a subjective judgment as to its sufficiency based on the nature of the mark and the conditions surrounding its use.

There is no specific rule as to the exact amount or type of evidence necessary at a minimum to prove acquired distinctiveness, but generally, the more descriptive the term, the greater the evidentiary burden to establish acquired distinctiveness. See *In re Bongrain International (American) Corp.*, 894 F.2d 1316, 13 USPQ2d 1727 (Fed. Cir. 1990); and *Yamaha*, supra at 1008. See also, 2 J. McCarthy, McCarthy on Trademarks and Unfair Competition, §15:28 (4th ed. 2001).

In support of its claim of acquired distinctiveness, applicant submitted the declarations, with exhibits, of Robert J. Landis, applicant's CFO, and Courtney E. Watson, applicant's corporate secretary. In the February 2000 declaration of Robert J. Landis, he avers that applicant has had "substantially exclusive and continuous use" of the mark COMPREHENSIVE BEHAVIORAL CARE for almost six years; that applicant "provides managed behavioral healthcare and substance abuse services for employers, health maintenance organizations, preferred provider organizations, government organizations, third[-]party claim administrators and other group purchasers of healthcare"; that due to the small number and highly specialized nature of applicant's potential customers, "it is not necessary to engage in widespread advertising"; that the mark is used on a variety

of advertising and promotional brochures which are distributed at conferences and trade shows; that applicant has prepared several press releases promoting the services offered under the mark COMPREHENSIVE BEHAVIORAL CARE; that applicant's customers include the state of Michigan Department of Corrections and various HMOs such as Humana and Firstcare; and that as a result of the above, Mr. Landis believes the mark has gained substantial recognition in the healthcare industry and is recognized as applicant's service mark.

Ms. Watson avers that there has been substantially exclusive and continuous use for about three years (commencing in August 1995 to the time of her declaration in 1998); that during 1996 "revenue from services provided in connection with the COMPREHENSIVE BEHAVIORAL CARE mark nearly tripled to \$15.9 million from \$5.6 million the previous year"; that the mark is used on advertising and promotional brochures which are distributed at conferences and trade shows; that 10,000 copies each of applicant's annual reports for 1995 and 1996 have been distributed to applicant's "customers, shareholders, members of the investment community and others"; and that she believes the mark has gained substantial recognition in the healthcare industry and is recognized as applicant's service mark.

Applicant concludes that this evidence, when considered in the totality of the circumstances of applicant's use of the mark, is sufficient to constitute a prima facie showing of acquired distinctiveness. Specifically, applicant argues that applicant renders the involved services "almost exclusively to plan administrators and employers" (brief, p. 12) and thus the relevant purchasers for applicant's services are a narrow group, not the general public;⁶ that within this narrow and sophisticated universe, applicant's mark has acquired distinctiveness; and that the use for over five and one-half years, as well as the other information establishes prima facie that applicant's mark has acquired distinctiveness.

The Examining Attorney contends that the involved mark is highly descriptive and thus, applicant's declaration of nearly six years use (since 1995) is not sufficient to establish consumer recognition; that applicant's ownership of prior registrations for different marks and different

⁶ Applicant acknowledges that its Class 42 services ("healthcare in the nature of a behavioral health maintenance organization") are rendered to ordinary consumers, but in the specific context of when they are seeking mental health care. Applicant's attorney explained that the mark appears on the back of the customer's health benefit card, and these services are available only because a plan administrator or employer has purchased same from applicant. (Applicant's brief, pp. 11-12, footnote 3.)

goods and services is also insufficient; that there is no evidence of advertising expenditures, and no meaningful evidence of quantity of advertising; that there is no evidence of applicant's efforts to associate this phrase, COMPREHENSIVE BEHAVIORAL CARE, with the involved services, and identifying applicant as the source thereof; and that there is no evidence that advertising and promotion has succeeded in achieving consumer recognition of such phrase as identifying applicant as the source of the identified services.

Inasmuch as the applied-for mark is highly descriptive, the evidentiary burden on applicant to establish acquired distinctiveness is concomitantly higher. Here the record is devoid of any advertising figures, only a statement from applicant that it need not advertise much because the purchasers are such a limited and sophisticated universe. However, while the direct purchasers are presumably a knowledgeable and limited group, applicant has essentially acknowledged that the users of applicant's HMO services (Class 42⁷) consist of the general public. The only sales figures provided are for 1995 (\$5.6 million) and

⁷ Applicant is informationally advised that effective January 1, 2002, HMO services would be classified by the USPTO in International Class 44.

1996 (\$15.9 million). While this shows a significant one-year increase in sales, there is no information as to why sales tripled in one year, nor any information on sales from any other years. Specifically, applicant has not offered any information or evidence relating the sales increase to consumer recognition of applicant's applied-for mark, COMPREHENSIVE BEHAVIORAL CARE.

In fact, the record is devoid of any direct information of consumer recognition, such as declarations from purchasers and/or users of applicant's identified services. This type of direct evidence is not required, but is generally more persuasive than, for example, two years of sales figures, a statement that applicant need not advertise much, and copies of press releases prepared by applicant regarding its applied-for mark, with no indication if the press releases were picked up and run in any relevant publications. The evidence submitted by applicant may show some popularity of applicant's services (particularly those offered under the mark COMPCARE), but it does not establish that the phrase COMPREHENSIVE BEHAVIORAL CARE identifies and distinguishes the services rendered by applicant in the minds of relevant purchasers and users. Applicant has provided no evidence at all as to the relevant public's perception of the applied-for mark.

To whatever extent applicant is contending that its ownership of prior registrations for the marks COMPREHENSIVE CARE CORPORATION and COMPCARE adds to its contention that its applied-for mark COMPREHENSIVE BEHAVIORAL CARE has acquired distinctiveness, we disagree. Rather, we find the prior registrations of extremely limited value in establishing acquired distinctiveness of the mark now before us, which is a different mark from the prior registered marks of applicant. The public's association of the marks COMPREHENSIVE CARE CORPORATION and COMPCARE with applicant does not mean that the mark COMPREHENSIVE BEHAVIORAL CARE will automatically be seen by the public as also indicating source in applicant. Applicant's own uses show predominant use of COMPCARE (see Exhibit B to the Landis declaration—applicant's informational brochure) as a trademark/service mark, and applicant's use of COMPREHENSIVE BEHAVIORAL CARE more as a trade name (see Exhibit C to the Landis declaration—press releases). Thus, it appears that purchasers and users recognize COMPCARE as identifying applicant as the source of certain behavioral healthcare goods and services, but there is a dearth of evidence to show that purchasers and users recognize COMPREHENSIVE BEHAVIORAL CARE as

identifying applicant as the source of its identified behavioral healthcare services.

In the instant case, the overall evidence is insufficient to establish a prima facie showing that applicant's highly descriptive mark has acquired distinctiveness under Section 2(f). See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991); and *In re Redken Laboratories, Inc.*, 170 USPQ 526 (TTAB 1971).

Decision: The refusal to register under Section 2(e)(1) is affirmed, and applicant has failed to prove the applied-for mark has acquired distinctiveness under Section 2(f).